IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 25172 of 2007(V)

OS.401/1998 of MUNSIFF COURT,ATTINGAL

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PETITIONER:

PUSHPARAJAN, S/O KAMALASANAN,
RESIDING AT MANAKKADU PUTHEN VEEDU,
AVANAVANCHERRY VILLAGE, CHITTATTINKARA DESOM.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.RAJAN VELLOTH
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENTS:

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1. SONI, S/O SOMANATHAN,
RESIDING AT MANAKKATTU PUTHEN VEEDU,
AVANAVANCHERRY VILLAGE, CHITTATTINKARA DESOM.

2. SUSEELA, W/O PRASANNAN,
RESIDING AT VARUVILAKOM VEEDU,
AVANAVANCHERRY VILLAGE.

3. USHA, D/O SOMANATHAN,
AARADHANA BHAVAN, EDAKKODE DESOM AND VILLAGE.

4. JOSE, S/O SOMMANATHAN,
VARUVILAKOM VEEDU, AVANAVANCHERRY VILLAGE,
CHITTATTINKARA DESOM.

5. USHA, W/O MADHU,
AARADHANA, EDAKKODE DESOM AND VILLAGE.

6. ARUN, S/O MADHU,
AARADHANA, EDAKKODE DESOM AND VILLAGE.

7. AKHI, S/O MADHU,
AARADHANA, EDAKKODE DESOM AND VILLAGE.

8. ANOOP, S/O MADHU,
AARADHANA, EDAKKODE DESOM AND VILLAGE.

9. THANKAMMA, W/O KRISHNAN,
AARADHANA, EDAKKODE DESOM AND VILLAGE.

10. PRIJI PRASANNAN, D/O PRASANNAN,(MINOR)
VARUVILAKOM VEEDU, AVANAVANCHERRY DESOM AND VILLAGE.

11. PREETHI PRASANNAN, D/O PRASANNAN(MINOR)
VARUVILAKOM VEEDU, AVANAVANCHERRY DESOM AND VILLAGE. (MINOR RESPTS. 10 & 11 REP. BY THEIR GUARDIAN AND MOTHER, SUSEELA, W/O PRASANNAN, RESIDING AT VARUVILAKOM VEEDU, AVANAVANCHERRY VILLAGE, THE 2ND RESPONDENT HEREIN).

BY ADV. SRI.G.S.REGHUNATH (FOR R1-R4 & R6 TO R9)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JP

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER DATED 1.8.2007.

EXT. P2: COPY OF THE OBJECTION FILED BY THE 6TH RESPONDENT DATED 13.8.2007.

EXT. P3: COPY OF THE ORDER PASSED BY THE COURTOF THE MUNSIFF, ATTINGAL IN I.A. NO.1528/2007 IN O.S. NO.401/1998 DATED 13.8.2007.

/TRUE COPY/

P.A. TO JUDGE

JP

M.N. KRISHNAN, J.

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W.P.C. NO. 25172 OF 2007

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Dated this the 1st day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P3 order passed by the learned Munsiff, Attingal. A perusal of the order itself would reveal that what the plaintiff wants by way of an amendment is to incorporate the exact measurement in tune with the Commissioner's report. The question whether the plaintiff is entitled to the prescribed right of way as contended by him is a matter of evidence. When ultimately the Court finds that a person is entitled to a right of way there must be a definite way and a decree can be passed only with respect to a definite way. Therefore, I do not find that by amending the plaint in tune with the measurement given by the Commissioner, will change the character of the suit or take away the valuable plea of a defendant in the suit. Therefore, I set aside the order dismissing the amendment application and allow the same

and direct the Court below to permit the defendant in the suit to file additional written statement and then dispose of the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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